

SUBCHAPTER K—REGULATIONS UNDER PUBLIC LAW 91-469

PART 390—CAPITAL CONSTRUCTION FUND

- Sec.
- 390.1 Scope of the regulations.
- 390.2 Application for an agreement.
- 390.3 Policy considerations.
- 390.4 Description of the agreement.
- 390.5 Agreement vessels.
- 390.6 Administration of the agreement.
- 390.7 Deposits into the fund.
- 390.8 Investment of the fund.
- 390.9 Qualified withdrawals.
- 390.10 Nonqualified withdrawals.
- 390.11 Sale or other disposition of agreement vessels.
- 390.12 Liquidated damages.
- 390.13 Failure to fulfill a substantial obligation under the agreement.
- 390.14 Departmental reports and certification.
- APPENDIX I TO PART 390—U.S. DEPARTMENT OF TRANSPORTATION, MARITIME ADMINISTRATION—APPLICATION INSTRUCTIONS
- APPENDIX II TO PART 390—SAMPLE CAPITAL CONSTRUCTION FUND AGREEMENT
- APPENDIX III TO PART 390—U.S. DEPARTMENT OF TRANSPORTATION, MARITIME ADMINISTRATION—SAMPLE SEMIANNUAL REPORT
- APPENDIX IV TO PART 390—SAMPLE ADDENDUM TO MARITIME ADMINISTRATION CAPITAL CONSTRUCTION FUND AGREEMENT
- APPENDIX V TO PART 390—SAMPLE QUALIFIED TRADE AFFIDAVIT

AUTHORITY: Secs. 53501, *et seq.*, of Title 46, United States Code, formerly, section 607, Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1177); 49 CFR 1.66.

SOURCE: 41 FR 4265, Jan. 29, 1976, unless otherwise noted.

§ 390.1 Scope of the regulations.

(a) *In general*—(1) *Scope*. The regulations prescribed in this part govern the capital construction fund (“fund”) authorized by 46 U.S.C. 53501 *et seq.*

(2) *Establishment of a fund*. A fund is established by an agreement (“agreement”), which is a contract between the party (“party”) and the United States.

(3) *Purpose of the fund*. Chapter 535 provides that any agreement entered into with the Secretary of Transportation must be for the purpose of providing replacement vessels, additional vessels or reconstructed vessels to be built and documented in the United States and operated in the United

States foreign, Great Lakes or non-contiguous domestic trade.

(4) *Benefits of a fund*. Chapter 535 provides for the nontaxability of certain deposits of money or other property placed into a fund established pursuant to an agreement within certain ceilings. These ceilings are equal to:

(i) Earnings or gains realized from the operation of an agreement vessel;

(ii) Net proceeds realized from the sale or other disposition of an agreement vessel or from insurance or indemnification from the loss of an agreement vessel; and

(iii) Earnings from the investment or reinvestment of amounts on deposit in the fund.

(5) *Delegation*. The Secretary of Transportation has delegated the authority for matters relating to the United States Merchant Marine to the Maritime Administrator, Department of Transportation (“Maritime Administrator”).

(b) *Act*. For purposes of this part, the term Act shall mean Chapter 535 of Title 46, United States Code.

(c) *Joint regulations*. For purposes of this part, the term *joint regulations* shall mean the regulations prescribed by the Secretary of Transportation and the Secretary of the Treasury under Chapter 535 and published in title 26, part 3 of the Code of Federal Regulations (reprinted in part 391 of this chapter).

(d) *Cross references*. For rules relating to the Federal Income Tax aspects of a fund, see the joint regulations. For rules governing agreements relating to the fisheries of the United States, see the separate Secretary of Commerce regulations published in title 50, part 259 of the Code of Federal Regulations.

[41 FR 4265, Jan. 29, 1976, as amended at 73 FR 56740, Sept. 30, 2008]

§ 390.2 Application for an agreement.

(a) *In general*—(1) *Application instructions*. The Maritime Administrator has adopted instructions for making application for an agreement. These instructions are contained in appendix I to

Maritime Administration, DOT

§ 390.3

this part. MARAD will accept electronic options (such as facsimile and Internet) for transmission of required information to MARAD, if practicable.

(2) *General eligibility requirements.* Chapter 535 specifies who is eligible for a fund and the application instructions specify what information is required to establish such eligibility. An applicant must:

(i) Be a citizen of the United States within the meaning of 46 U.S.C. 50501, as amended (46 U.S.C. 802, 803). See part 355 of this title for requirements for establishing United States citizenship;

(ii) Own or be the lessee of one or more eligible vessels or share thereof as defined in 46 U.S.C. 53501, or be party to a contract for the construction of one or more eligible vessels, or share thereof, as defined in paragraph (b) of § 390.5;

(iii) Have a program which furthers the purposes of the Act (see § 390.3 relating to policy considerations) and provides for the acquisition, construction or reconstruction of a qualified vessel, as defined in 46 U.S.C. 53501(5). Such provisions state that the vessel will be operated in the United States foreign, Great Lakes, noncontiguous domestic, or short sea transportation trade as defined in 46 U.S.C. 53501 and 46 U.S.C. 109(b); and

(iv) Demonstrate the financial capabilities to accomplish the program.

(b) *Information which may be required in conjunction with the application.* An applicant must provide such facts, documents and materials as the Maritime Administrator may require in considering whether to enter into an agreement. An applicant should be ready to make available such applicable materials, including, but not limited to: Design plans, data concerning the reasonableness of the cost of the program, construction contracts, financial statements, certificates of incorporation, bylaws, articles of partnership, stock ownership data and other information including judgments and pending litigation which would affect the proposed

program. The specific information required is set forth in the instructions.

(Approved by the Office of Management and Budget under control number 2133-0027)

[41 FR 4265, Jan. 29, 1976, as amended at 47 FR 25530, June 14, 1982; 68 FR 62539, Nov. 5, 2003; 69 FR 61452, Oct. 19, 2004; 73 FR 56740, Sept. 30, 2008]

§ 390.3 Policy considerations.

(a) *In general.* It is the policy of the United States, as set forth in 46 U.S.C. 50501, that for the national defense and the development of its foreign and domestic commerce, the United States shall have a merchant marine: sufficient to carry a substantial portion of its water-borne export and import foreign commerce and to provide shipping service essential for maintaining the flow of such commerce at all times; capable of serving as auxiliaries in time of war or national emergency; owned and operated by United States citizens insofar as practicable and composed of the best equipped, safest and most suitable types of vessels, constructed and documented in the United States and manned with United States citizens.

(b) *Unacceptable programs*—(1) *In general.* The Maritime Administrator will not enter into an agreement where the proposed program is not, in his opinion, in consonance with the policies of the Act.

(2) *Specific unacceptable programs.* The Maritime Administrator will not enter into an agreement where the proposed program is merely to accomplish the following:

(i) Reconstruction of an existing vessel, unless such reconstruction will exceed \$1,000,000 in cost, will be capitalized under the Internal Revenue Code of 1986, as amended, and the regulations thereunder and will result in a vessel which is significantly more competitive;

(ii) Acquisition of an existing vessel; or

(iii) Payment of the principal on existing indebtedness.

(3) *Waiver.* The Maritime Administrator may, for good cause shown, waive the provisions of paragraph (b)(2) of this section. For example, the Maritime Administrator may waive the monetary limit in paragraph (b)(2)(i) of